Supreme Court, U.S.
FILED
MAR 10 1992
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No. 91-779

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,
v.
WILLIAM D. FORD,
Respondent.

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,
v.
THOMAS L. JOHNSON,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of Montana

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 12, 1991
CERTIORARI GRANTED JANUARY 27, 1992

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MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

DV 89 974

WILLIAM D. FORD,
Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant.

RELEVANT DOCKET ENTRIES

Date	No.	Entries
8/11/89	1	Complaint Filed
8/11/89	2	Summons Issued ref 8-28-89
9/6/89	3	Motion for Change of Place of Trial filed
10/06/89	6	Memorandum in support of motion for change of place of trial filed
10/06/89	7	Affidavit filed
11/08/89	11	NOTICE OF TAKING DEPOSITION FLD (Defendant)
11/09/89	12	Amended NOTICE OF TAKING DEPOSITION FLD (Defendant)
03/07/90	22	BRIEF IN OPPOSITION FILED (to Mo/ change of Venue)
03/08/90	23	MOTION FILED (for Notification)
03/08/90	24	BRIEF IN SUPPORT FILED (of motion for Notification)
3/23/90	27	Brief in response to motion for notification filed

Date	No.	Entries
4/4/90	28	Pltfs REPLY BRIEF FILED (re: Mo/notification)
4/20/90	29	Reply memo in supp. of Mo/change of place of trial filed
5/1/90	30	CERTIFICATE OF SERVICE FILED (Discovery)
5/8/90	31	Notice of right of intervention filed
6/19/90	32	MOTION FILED (to Lodge discovery)
6/20/90	33	ORDER GRANTING (Mo to file discovery) (1-item only)
6/20/90	34	DISCOVERY FILED (Response to Interrogatories)
6/26/90	35	Notice of filing RESPONSE FILED
8/1/90	36	Motion filed (to withdraw plaintiffs Request)
8/7/90	37	Order filed (admitting motion on briefs)
9/7/90	38	Order & Memorandum (denying motion) filed
10/5/90	39	Notice of Appeal fld
10/5/90	40	PROOF OF MAILING FILED
9/3/91	41	Remittitur Affirming filed
9/3/91	42	Supreme Court Opinion filed
11/20/91	43	Notice of filing

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

DV 89 975

THOMAS L. JOHNSON,
Plaintiff,

VS.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware Corporation,
Defendant.

RELEVANT DOCKET ENTRIES

Date	No.	Entries
8/11/89	1	Complaint Filed
8/11/89	2	Summons Issued ref 8-28-89
9/6/89	3	Motion for Change of Place of trial filed
10/06/89	6	Memorandum in support of motion for change of place of trial filed
10/06/89	7	Affidavit filed (Mark C. Bruce)
11/08/89	11	NOTICE OF TAKING DEPOSITION FLD (Defendant)
11/08/89	12	NOTICE OF TAKING DEPOSITION FLD (Defendant)
3/7/90	20½	Pltfs brief in opposition to change of venue
3/8/90	21	MOTION FILED for notification
3/8/90	22	BRIEF IN SUPPORT FILED
3/23/90	25	Brief in Response to Mo. for Notification filed
4/4/90	26	Plaintiff's REPLY BRIEF FILED

Date	No.	Entries
4/20/90	27	Reply Memorandum fld. (Defendant change of place of trial)
05/01/90	28	CERTIFICATE OF SERVICE FILED (Discovery)
06/19/90	29	MOTION FILED (to Lodge fruits of discovery)
6/28/90	30	ORDER GRANTING Motion #29
7/2/90	31	Notice of filing Discovery filed
8/1/90	32	MOTION FILED (to withdraw plaintiff's Request)
8/2/90	33	ORDER FILED (re: right to appear)
8/14/90	34	ORDER FILED (Change Place of trial)
9/21/90	35	ORDER DENYING FILED (Change of Venue)
10/5/90	36	Notice of Appeal fld
10/5/90	37	PROOF OF MAILING FILED
9/3/91	38	Remittitur Affirming filed (Copy)
9/3/91	39	Copy of Supreme Court Opinion filed
11/20/91	40	Notice of filing filed

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

Cause No. DV 89-974

Judge: RUSSELL K. FILLNER

WILLIAM D. FORD,
Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant.

COMPLAINT AND REQUEST FOR JURY TRIAL

COMES NOW the Plaintiff, William D. Ford, by his attorneys, Gary K. Wood and Robert S. Fain, Jr., and for his complaint against Defendant, Burlington Northern Railroad Company, a corporation, states:

1. Plaintiff brings this action under the provisions of Title 45, Sections 1-60 of the United States Code, regulations promulgated under the authority of those sections, and other Federal Safety laws which have been incorporated herein by decision; of which Sections 51-60 commonly known and referred to as the Federal Employers' Liability Act and under the terms of that Act this Court has jurisdiction.

2. At all times herein mentioned Defendant was a corporation engaged in the business of owning, maintaining and operating a line and system of railroad which extended in part through Billings, Montana.

3. At all times herein mentioned Defendant was an interstate carrier by rail and was engaged in interstate transportation and commerce.

4. At the time of the occurrence for which this action is brought Plaintiff was employed by Defendant as its servant and employee and part or all of Plaintiff's duties were in the furtherance of interstate commerce or directly, closely and substantially affected interstate commerce.

5. Both Plaintiff and his employer, the Defendant herein, were engaged in interstate commerce within the meaning of the Federal Employers' Liability Act and their mutual rights and liabilities were governed and controlled by that Act at the time of the occurence for which this action is commenced.

6. On or about February 7, 1989, at approximately 11:20 a.m., Plaintiff was engaged in performing the duties of his employment, namely that of a brakeman, in or about the Defendant's roundhouse in Sheridan, Wyoming.

7. At the time and place aforesaid, while in the process of walking down the sidewalk to enter the roundhouse, Plaintiff slipped and fell on the snow covered ice which had been allowed to accumulate in the area and as a result of which, Plaintiff was caused to suffer injuries to his left knee and other parts.

8. At the time and place aforesaid, Defendant, by and through its agents and employees, was then and there guilty of one or more of the following acts of negligence in violation of the Federal Employers' Liability Act, Title 45, Section 51-60 of the United States Code:

A. Failure to adopt, install, implement and enforce a safe method and procedure for periodic inspection, maintenance and upkeep of the area described.

B. Failure to properly inspect, maintain, and clean its walkways, work areas and properties used by its employees for ingress and egress or for working areas so that the same became hazardous to the safe footing of its employees.

C. Failure to establish proper procedures for the removal of snow and ice and for the application of sand or salt on snow packed and icy areas.

D. Failure to warn or otherwise signal the presence and hazardous nature of the walkway due to the accumulation of ice and snow.

E. Finally, failure to provide plaintiff that reasonably safe place to work required by law in such cases made and provided.

9. One or more of the aforesaid wrongful acts of Defendant in whole or in part contributed to injure Plaintiff, both externally and internally, in and about his left knee and other parts of his body with resultant past, present and future pain, suffering, discomfort, physical impairment, anxiety, total disability, permanent partial disability, diminution of earning capacity, partial loss of enjoyment of living, medical and hospital expense and wage loss, some of which conditions are permanent in nature.

That by reason of the facts hereinabove set forth and as a direct result thereof, as aforesaid, Plaintiff has been generally damaged in an amount to be proven at time of trial.

WHEREFORE, Plaintiff prays judgment against Defendant in an amount established by the evidence, interest, costs and whatever other relief this Court deems appropriate, together with such special damages as may be hereafter ascertained, and for his costs of suit incurred herein, interest on said damages as allowed by law, expert witness fees and other relief this Honorable Court deems just and proper.

REQUEST FOR JURY TRIAL

PLAINTIFF DEMANDS A JURY TRIAL TO HEAR ALL ISSUES CONTAINED HEREIN.

Dated this 11th day of August, 1989.

GARY K. WOOD, ESQ.
MORRISARD & ROSSI, P.C.
12203 East Second Avenue
Aurora, CO 80011-8399

ROBERT S. FAIN, JR., ESQ.
WRIGHT, TOLLIVER and
GUTHALS, P.C.
P.O. Box 1977
Billings, MT 59103-1977

By: /s/ Robert S. Fain, Jr.
Co-counsel for Plaintiff

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

Cause No. DV: 89-975

Judge: WILLIAM J. SPEARE

THOMAS L. JOHNSON,
Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant.

COMPLAINT AND REQUEST FOR JURY TRIAL

COMES NOW the Plaintiff, Thomas L. Johnson, by his attorneys, Gary K. Wood and Robert S. Fain, Jr., and for his complaint against Defendant, Burlington Northern Railroad Company, a corporation, states:

1. Plaintiff brings this action under the provisions of Title 45, Sections 1-60 of the United States Code, regulations promulgated under the authority of those sections, and other Federal Safety laws which have been incorporated herein by decision; of which Sections 51-60 commonly known and referred to as the Federal Employers' Liability Act and under the terms of that Act this Court has jurisdiction.

2. At all times herein mentioned Defendant was a corporation engaged in the business of owning, maintaining and operating a line and system of railroad which extended in part through Billings, Montana.

3. At all times herein mentioned Defendant was an interstate carrier by rail and was engaged in interstate transportation and commerce.

4. At the time of the occurrence for which this action is brought Plaintiff was employed by Defendant as its servant and employee and part or all of Plaintiff's duties were in the furtherance of interstate commerce or directly, closely and substantially affected interstate commerce.

5. Both Plaintiff and his employer, the Defendant herein, were engaged in interstate commerce within the meaning of the Federal Employers' Liability Act and their mutual rights and liabilities were governed and controlled by that Act at the time of the occurence for which this action is commenced.

6. On or about August 22, 1987, at approximately 3:30 p.m., Plaintiff was engaged in performing the duties of his employment, namely that of a locomotive engineer, in or about the Defendant's premises in Sheridan, Wyoming.

7. At the time and place aforesaid, while in the process of reporting to work and was driving his motorcycle on a railroad access road to the point where he was to report for duty, Plaintiff was caused to suffer injuries to his left knee.

8. At the time and place aforesaid, Defendant, by and through its agents and employees, was then and there guilty of one or more of the following acts of negligence in violation of the Federal Employers' Liability Act, Title 45, Section 51-60 of the United States Code:

A. Failure to adopt, install, implement and enforce a safe method and procedure for periodic inspection, maintenance and upkeep of the area described.

B. Failure to properly inspect, maintain, and repair its roadways and properties used by its employees for ingress and egress so that the same became hazardous to the safe travel of its employees.

C. Failure to properly inspect, maintain and process its properties so that the same could be used with safety by its employees.

D. Failure to warn or otherwise signal the presence of dirt piles created by the repair of the Defendant's roadway.

E. Finally, failure to provide plaintiff that reasonably safe place to work required by law in such cases made an [sic] provided.

9. One or more of the aforesaid wrongful acts of Defendant in whole or in part contributed to injure Plaintiff, both externally and internally, in and about his left knee with resultant past, present and future pain, suffering, discomfort, physical impairment, anxiety, total disability, permanent partial disability, diminution of earning capacity, partial loss of enjoyment of living, medical and hospital expense and wage loss, some of which conditions are permanent in nature.

That by reason of the facts hereinabove set forth and as a direct result thereof, as aforesaid, Plaintiff has been generally damaged in an amount to be proven at time of trial.

WHEREFORE, Plaintiff prays judgment against Defendant in an amount established by the evidence, interest, costs and whatever other relief this Court deems appropriate, together with such special damages as may be hereafter ascertained, and for his costs of suit incurred herein, interest on said damages as allowed by law, expert witness fees and other relief this Honorable Court deems just and proper.

REQUEST FOR JURY TRIAL

PLAINTIFF DEMANDS A JURY TRIAL TO HEAR ALL ISSURES [sic] CONTAINED HEREIN.

Dated this 11th day of August, 1989.

GARY K. WOOD, ESQ.
MORRISARD & ROSSI, P.C.
12203 East Second Avenue
Aurora, CO 80011-8399

ROBERT S. FAIN, JR., ESQ.
WRIGHT, TOLLIVER and
GUTHALS, P.C.
P.O. Box 1977
Billings, MT 59103-1977

By: /s/ Robert S. Fain
Co-counsel for Plaintiff

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

SHERIFF'S RETURN

511-19

OFFICE OF THE SHERIFF

STATE OF MONTANA
COUNTY OF LEWIS AND CLARK

I hereby certify that I received the annexed Summons on the 17th day of August, 1989, and personally served the same on the 17th day of August, 1989, upon Burlington Northern Railroad Company by delivering to Stuart Kellner, Agent for C. T. Corporation Systems and authorized to accept service of process for Burlington Northern Railroad Company at 406 Fuller Avenue, Helena, Montana at 1050 hours personally in the County of Lewis and Clark, a true and correct copy of said Summons and Complaint; Request for Production of Documents and Interrogatories in re: Cause No. 89-974 and informing him of the contents thereof.

Received by ——— this —— day of ———, 19——

I hereby certify that after diligent search and inquiry of divers persons in sundry places I am unable to find in Lewis and Clark County, State of Montana, ———

———

———, being the ——— named in ———

———

Dated at Helena, Montana, this 17th day of August, 1989.

Service ... $23.00
Mileage ... $ 1.00
Total ... $24.00—pd

CHARLES M. O'REILLY
Sheriff

/s/ Nancy Fillinger
Civil Secretary

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

SHERIFF'S RETURN

511-19

OFFICE OF THE SHERIFF

STATE OF MONTANA
COUNTY OF LEWIS AND CLARK

I hereby certify that I received the annexed Summons on the 17th day of August, 1989, and personally served the same on the 17th day of August 1989, upon Burlington Northern Railroad Company by delivering to Stuart Kellner, Agent for C. T. Corporation Systems and authorized to accept service of process for Burlington Northern Railroad Company at 406 Fuller Avenue, Helena, Montana at 1050 hours personally in the County of Lewis and Clark, a true and correct copy of said Summons and Complaint; Request for Production of Documents and Interrogatories in re: Cause No. 89-975 and informing him of the contents thereof, _____

Received by _____ this ____ day of _____ 19____

I hereby certify that after diligent search and inquiry of divers persons in sundry places I am unable to find in Lewis and Clark County, State of Montana, _____

_____

_____, being the _____ named in _____

_____

Dated at Helena, Montana, this 17th day of August, 1989

Service ... $23.00
Mileage ... $ 1.00
Total ... $24.00—pd

CHARLES M. O'REILLY
Sheriff

/s/ Nancy Fillinger
Civil Secretary

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

No. DV 89-974

JUDGE RUSSELL K. FILLNER

WILLIAM D. FORD,
Plaintiff,

-v-

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant.

MOTION FOR CHANGE OF PLACE OF TRIAL

(Section 25-2-114, M.C.A.; Section 25-2-118 M.C.A.; Rule 12(b)(ii), M.R. Civ. P.)

COMES NOW Defendant Burlington Northern Railroad Company ("BN") and moves pursuant to Mont. Code Ann. Section 25-2-114 for an order changing the place of trial to and transferring venue to Hill County, Montana, BN's principal place of business in Montana, on the grounds that Yellowstone County is not the proper county for trial of this action and, insofar as Mont. Code Ann. Section 25-2-118 permits trial against BN in Yellowstone County, that provision discriminates against corporations not incorporated in Montana in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Dated this 6th day of September, 1989.

KURT W. KROSCHEL & ASSOCIATES

By: /s/ R. D. Yerger
RUSSELL D. YERGER
Of attorneys for Defendant
Burlington Northern Railroad
Company

(Certificate of Service Omitted in Printing)

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

No. DV 89-975

JUDGE WILLIAM J. SPEARE

THOMAS L. JOHNSON,
Plaintiff,

-v-

BURLINGTON NORTHERN RAILROAD COMPANY,
Defendant.

MOTION FOR CHANGE OF PLACE OF TRIAL

(Section 25-2-114, M.C.A.; Section 25-2-118, M.C.A.; Rule 12(b)(ii), M.R. Civ. P.)

COMES NOW Defendant Burlington Northern Railroad Company ("BN") and moves pursuant to Mont. Code Ann. Section 25-2-114 for an order changing the place of trial to and transferring venue to Hill County, Montana, BN's principal place of business in Montana, on the grounds that Yellowstone County is not the proper county for trial of this action and, insofar as Mont. Code Ann. Section 25-2-118 permits trial against BN in Yellowstone County, that provision discriminates against corporations not incorporated in Montana in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Dated this 6th day of September, 1989.

KURT W. KROSCHEL & ASSOCIATES

By: /s/ R. D. Yerger
RUSSELL D. YERGER
Of attorneys for Defendant
Burlington Northern Railroad
Company

(Certificate of Service Omitted in Printing)

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

No. DV 89-974

JUDGE RUSSELL K. FILLNER

WILLIAM D. FORD,
Plaintiff,

-v-

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant.

AFFIDAVIT

STATE OF MONTANA)
) ss.
COUNTY OF HILL)

Mark C. Bruce, being duly sworn upon oath deposes and states as follows:

1. I serve as Director, Operations Services, for the Montana Division of the Burlington Northern Railroad ("BN"). In that capacity, I am responsible for overseeing the Montana Division's 100 million dollar annual operating budget, administration, payroll and personnel in the State. I therefore have first-hand knowledge of the structure of BN's Montana Division.

2. BN's principal place of business in Montana is at Havre, in Hill County. The Division office for the Montana Division is located in Havre and directs railroad operations throughout the State. The General Manager

for the Division is Wayne Eisenman, who answers directly to the Regional Vice President.

3. About 900 of BN's 1700 employees in the State work in Havre. More than 35 management positions are located in Havre.

4. BN's Montana Division handles its payroll function in Havre and maintains its payroll and personnel files there. BN's Montana Division also tests and repairs its equipment in Havre and maintains files relating to that function in Havre.

5. Although BN at one time maintained several lines in Yellowstone County, the bulk of that track has now been sold or leased to Montana Rail Link. The Laurel Yard is also operated by Montana Rail Link.

6. BN has closed its dispatching operations and regional and divisional offices in Yellowstone County.

/s/ Mark C. Bruce
MARK C. BRUCE

SUBSCRIBED AND SWORN to before me this 4th day of October, 1989.

/s/ [Illegible]
Notary Public for the State of
Montana
Residing at: Havre, Mont.
My Commission Expires:
7-14-92

(NOTARIAL SEAL)

(Certificate of Service Omitted in Printing)